In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 229.

In the Matter of
JEFFREY FISCHER,
a minor.

SUPPLEMENTAL BRIEF OF APPELLEE.

The Appellee's reply brief contains certain arguments that appellees have had no opportunity to answer until now. And it is submitted that this case contains facts which have not been passed upon by this Court, but which, it is submitted, plainly remove this case from the legal rules declared by this Court in the *Escobedo, Miranda,* and *Gault* cases. The argument in this brief will be short.

This is a case where a 17 year old boy voluntarily confessed to the setting of five garage fires, giving the details as to when and how he set each fire, resulting in substantial damage. This boy was questioned five times by the police who treated him with unusual fairness and kindness and who in no way forced or wrongfully induced said confession. After the confession, which the parents saw and heard, the parents twice complimented the police on their kind and fair treatment of Jeffrey Fischer, which they admit. Both the parents and Jeffrey consented to all questionings by the police and the two lie detector tests were given only after conferences by police with Jeffrey and his parents, each of whom signed written consent to said lie detector tests and the questioning thereafter. After the second and final lie detector test the parents specifically

consented to the final questioning of Jeffrey and so did Jeffrey.

In all these questionings *Jeffrey fully exercised his constitutional rights* in that he refused to give the true facts until he *voluntarily* did so after the last lie detector test. The *details* as to the starting of these fires *as given by Jeffrey* are *corroborated in detail* by five expert witnesses and six other witnesses who were not fire experts. If Jeffrey did not start these fires how could he know and give accurate testimony as to the details of said fires? And what better or more detailed corroboration could be desired?

It is submitted that this case substantially differs from the *Escobedo*, *Miranda* and *Gault* cases both as to the facts and law. In those cases there is no doubt that the accused was denied his constitutional rights. In this case that is clearly untrue. In this case all police action was talked over with the parents and Jeffrey *before* any action or questioning of Jeffrey occurred. The evidence of the truth of this fact is borne out by the testimony on *both* sides of the case. At all times before the police questioned him Jeffrey and his parents specifically consented to said police questioning and lie detector tests. In all questioning and lie detector tests the police were most kind and fair and *it is most important to remember that at all times in all questioning and lie detector tests Jeffrey fully exercised his constitutional rights to remain silent as to starting said fires without any pressure from the police. When Jeffrey did confess he was under no police pressure but he obviously was under the pressure of guilt feelings. For a guilty person to suffer from guilt pressure and confess of his own free choice creates no violation of constitutional rights.* A cord: *Rodgers vs. Richmond*, 365 U. S. 534, 5 L. Ed. (2) 760 (headnote 4).

By Ohio statute this is a civil and *not* a criminal case, but this Court has held that in the case of juveniles that makes no difference so far as constitutional rights of juveniles are concerned. In this case Jeffrey Fischer was committed by the Juvenile Court to the Ohio Youth Commission in Columbus, which is purely and entirely a rehabilitational institution and is in no sense a criminal or penal institution. But at all times herein concerned Jeffrey has been, and is, living at home with his parents. If he goes to said Youth Commission he will be released when he becomes 21 years old (in a little over one year from now). It is submitted that even if this Court treats this case as a criminal case there is no violation of any constitutional or legal rights concerned herein.

To come to the essence of this case it is a case where the facts unquestionably and plainly show, from evidence on *both* sides of the case, that:

1. the confession of Jeffrey was in no way forced or induced by wrongful or illegal means;

2. that the evidence plainly shows, by some admissions of Jeffrey, by the testimony of psychiatrists and by other evidence that Jeffrey confessed because of a guilt feeling caused by what he knew he did;

3. that Jeffrey's parents never would have twice complimented the police on their kind and fair treatment of Jeffrey, *after* his confession, unless they were fully satisfied with police treatment and lack of police pressure;

4. that Jeffrey's detailed confession, fully corroborated by 11 witnesses, including 5 fire experts, could leave no reasonable doubt that Jeffrey started the concerned fires.

It is submitted that even though an accused is not warned of his constitutional rights, if the accused exer-

cises those rights, is not pressured and is most kindly and fairly treated, and confesses voluntarily because of real guilt pressure in his own mind no violation of constitutional rights exists. How could it?

As to counsel the Fischer family had legal counsel for some time *before* trial and at all times *during* and *since* trial. When an accused *exercises* his constitutional rights and his confession is really voluntary, the absence of counsel during that period of time is *no* violation of constitutional rights.

This brings us to a very important question: how far may courts go in protecting people who commit very serious crimes, the proof of which is clear and certain? Certainly a government and its citizens are clearly entitled to protection against crime and persons committing criminal acts. Freely granted that people are entitled to their constitutional rights, but it is equally certain that that protection cannot be legally or morally justified if it exceeds what is reasonable and fair to the government and the injured people concerned. It is submitted that in this case the State's proof and the decision of the Juvenile Court are entirely valid and that Jeffrey Fischer is exceedingly fortunate that he was not charged with the commission of any crime.

It is submitted that this appeal should be dismissed at appellant's costs.

Respectfully submitted,

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